IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2104 OF 2006

SHRI SILVA @ GORA SILVA AYANAR)
ARJUN, residing at Garib Janata)
Nagar Hutment, Hut No. 170)
Capt. Prakash Pethe Marg, Cuffe)
Parade, Mumbai 400 005) .. PETITIONERS

Versus

1. SHRI NAWAL BAJAJ)
Deputy Commissioner of Police
Zone-I, Colaba, Mumbai)

2. STATE OF MAHARASHTRA) RESPONDENTS

Mr. U.N. Tripathi for petitioner

Mrs. M.H. Mhatre, APP

CORAM:-SMT. RANJANA DESAI, J.

DATED:-13/11/2006

ORAL JUDGMENT:

. The petitioner has prayed that the order of externment dated 26.6.06 issued under Section 56(1)(a)(b) of the Bombay Police Act, 1951 ("the said Act" for short) by the Deputy Commissioner of Police, Zone-I, Colaba against the petitioner be quashed and set aside;

2. It appears that on or about 4/5/06 a show cause notice came to be issued against the petitioner by the Assistant Commissioner of Police, Colaba Division, Mumbai requiring the petitioner to show cause as to why he should not be externed from Greater Bombay, New Bombay, Thane and Raigad Districts for two years for the offences mentioned in the show cause notice. The petitioner filed his reply. He appeared before the enquiry officer. He examined his witnesses. The enquiry officer forwarded his case to the externing authority.

3. On or about 26/6/06 the impugned order of externment was received by the petitioner externing him from Greater Bombay, New Bombay, Thane and Raigad Districts for two years. The petitioner preferred an appeal before the State Government under Section 60 of the said Act. The said appeal was rejected on 21/9/06. Hence the petitioner has approached this court.

4. I have heard Mr. Tripathi, learned counsel appearing for the petitioner at some length. Mr.Tripathi assailed the impugned order on the ground that it is an excessive order. He submitted that the alleged activities of the petitioner on

account of which he is sought to be externed have been allegedly committed within the jurisdiction of Cuffe Parade Police Station and as such the petitioner could at best be externed from Greater Bombay but there is no justification for the 1st respondent's order externing the petitioner from New Bombay, Thane and Raigad Districts. The learned counsel also contended that the appellate authority also did not appreciate this submission of the petitioner.

5. In this connection Mr. Tripathi relied on **Balu Shivling Dombe v. The Divisional Magistrate, Pandharpur & Anr.,AIR 1969 BOMBAY 351**, and **Pandharinath Shridhar Rangnekar v. Dy. Commissioner of Police, State of Maharashtra, AIR 1973 SC 630**. Mr. Tripathi also submitted that it will not be open to this court to restrict the area of externment to Greater Bombay at this stage. In this connection the learned counsel relied on the judgment of this court in **Umar Mohamed Malbari v. K.P.Gaikwad, Dy. Commissioner of Police & Anr., 1988, Mh. L.J. 1034**.

6. Ms. Mhatre, the learned APP on the other hand contended that no interference is necessary with

the impugned order. She took me to the affidavit of Ashok Kashiram Gajbhiye, Assistant Police Inspector, Cuffe Parade Police Station, Mumbai in support of her submissions.

7. The order of externment indicates that it is the case of the 1st respondent that the petitioner has indulged in activities which have created reign of terror in the minds of people. But the said incidents have taken place in the areas which fall within the jurisdiction of Cuffe Parade Police Station and Colaba Police Station. However, the externing authority has chosen to extern the petitioner from the limits of Greater Bombay, New Bombay, Thane and Raigad Districts for two years. In the absence of any material indicating that the petitioner's activities have created insecurity amongst the people residing in these areas it was not open to the 1st respondent to extern the petitioner from the said areas. By no stretch of imagination can it be said that the petitioner's activities have created terror in the minds of people residing in such vast area. Such an order can aptly be described as excessive order.

8. In **Balu Dombe's case (supra)** while dealing with

a somewhat similar fact situation, this court observed as under:

> "Further the authority cannot extend the area of externment without references to the purpose of the externment. If the authority concerned is not to have an arbitrary and unguided discretion in deciding the area of externment it must follow that the area must be so chosen as to meet the situation created by the movements or acts of the person to be externed. Such an interpretation is also necessary in order that Section 56 may be in conformity with Art. 19 (5) of the Constitution referred to above. The restriction placed by Section 56 on the fundamental rights guaranteed by Article 19(1) (d) and (e) of the Constitution cannot be held to be a reasonable restriction, unless the area of externment is restricted to the requirement created by the movements or acts of the person to be externed."

9. In that case the externment order was set aside

as no reasons were suggested by the Divisional Magistrate for extending the area of externment to the District of Sholapur and the Districts of Poona and Satara as well when the petitioner was said to have indulged in illegal activities in Pandharpur city and the surrounding areas. This view was affirmed by the Supreme Court in **Pandharinath's case (supra)**.

10. There can be no doubt that the impugned order is an excessive order. The question is whether this court can at this stage restrict it to Greater Bombay or to some lesser area. Answer to this is found in the judgment of this court in **Umar Mohamed's case (supra)**. In that case the Division Bench of this court was dealing with similar questions. While rejecting the contention that the order of externment can be restricted to the area in which the petitioner is said to have committed illegal activities, this court observed as under:

> "If the activities indulged in by the petitioner were restricted within the Taluka of Bhiwandi within the Thane Commissionerate, the order externing the petitioner out of the Raigad and Nasik

Districts which has within them Taluka places at a distance of more than 100 miles will undoubtedly be an excessive order and an excessive order has necessarily to be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. In the case of Balu Shivling Domble vs. The Divisional Magistrate reported in 1969 Mh. L.J. 387 = 71 BLR at page 79 which case was cited with approval in the case of Pandharinath reported in AIR 1973 SC page 630, on the facts of that case the externment order was set aside on the ground that it was far wider than was justified by the exigencies of the case. The activities of the externee therein were confined to the city of Pandharpur and yet the externment order covered an area as extensive as the districts of Sholapur, Satara and Poona. These areas were far widely removed from the locality in which the externee had committed his illegal acts. The exercise of the power was, therefore, arbitrary and excessive;

> the order having been passed without reference to the purpose of the externment was quashed."

This court further observed as under:

> "Where the activities indulged in by the petitioner were restricted within the Taluka of Bhiwandi within the Thane Commissionerate, the order externing the petitioner out of the Raigad and Nasik Districts which has within them Taluka places at a distance of more than 100 miles is an excessive order and the excessive order had necessarily to be struck down because no greater restraint on personal liberty can be permitted than is reasonable in the circumstances of the case. It cannot be said that the entire order of externment was not liable to be struck down merely because it covered areas which were excessive than what was justified and appropriate areas of externment can be substituted with the areas contemplated in the impugned order of externment. The High Court when it

issues the high prerogative writ of certiorari, it directs the judicial tribunal against which is acting to transmit its record to the Court and if necessary to quash the order which the Tribunal has passed. In issuing the writ the High Court is not to act as a Court of appeal. It is only concerned with the question as to whether the Tribunal exercising judicial or quasi-judicial function has or has not acted without jurisdiction or whether in the exercise of jurisdiction it has acted in excess of jurisdiction. If it has acted in excess of jurisdiction, then the jurisdiction of the High Court is to quash the order passed in excess of jurisdiction. There the power of the High Court stops. It has no power to go further and to correct an excessive order passed by the Authority concerned".

11. Similar view has been taken by this court in **Ganpat @ Ganesh Tanaji Katakre v. Assistant Commissioner of Police & Ors., 2006 (1) Bom.C.R.(Cri.) 44**. In view of this, the externment

order impugned in this petition will have to be set aside. Hence the following order:

> The order of externment bearing No. 163/C/43/2006 dated 26/6/06 issued under Section 56(1)(a)(b) of Bombay Police Act, 1951 by the Deputy Commissioner of Police, Zone-I, Colaba, Mumbai against the petitioner is quashed and set aside.
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> . Petition is disposed of in the aforestated terms.

JUDGE.